IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No.: 3350
FUNKE *et al.*	Art Unit: 4121
Appl. No.: 10/579,074	Examiner: PIHONAK, Sarah Maureen
§ 371(c) Date: May 21, 2007	Atty. Docket: 2400.0380000/JMC/CMB
For: **Combination of Active Substances with Insecticidal Properties**	

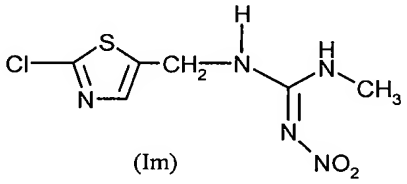
Reply to Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

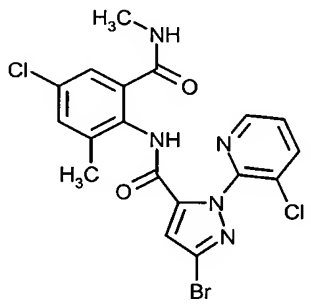
Sir:

In reply to the Office Action dated December 10, 2008, requesting an election of one invention to prosecute in the above-referenced patent application, Applicant hereby provisionally elects to prosecute the invention of Group I, represented by claims 1, 2, 4 and 5. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

The Office has also required Applicant to elect a single species from compounds of formulae I and II each. Applicants provisionally elect compound Im as a species of formula I, and compound II-1-4 as a species of formula II. The structures of these compounds are:



(Im)



(II-1-4)

Of the claims of provisionally elected Group I, claims 1, 2, 4 and 5 read on compound I-m and compound II-1-4.

This election is made **with traverse**.

This application is a National Phase Entry Under 35 U.S.C. § 371 and, as such, PCT Rule 13 requiring unity of invention applies. Title 37 of the Code of Federal Regulations states:

> (b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combination of categories: . . .
>
> (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; . . .37 C.F.R. § 1.475 (b)(1)(2).

Elected Group I contains claims drawn to a specific composition, Group II is drawn to a method of using the composition of Group I, and Group III is drawn to a process for preparing pesticides comprising compounds of Group I. Groups I, II and III therefore share unity of invention because the special technical feature common to all the claims in the groups is the composition of Group I. Applicants therefore respectfully assert that the Groups I, II and III share unity of invention and the Restriction Requirement is improper.

The Examiner has stated that the claims lack unity of invention since the claims allegedly are not so linked within the meaning of PCT Rule 13.2 so as to form a single inventive concept. Applicants respectfully disagree, and direct attention to section 1850 of the Manual for Patenting Examining Procedure, which states:

> Although lack of unity of invention should be raised in clear cases, it should neither be raised nor maintained on the basis of narrow, literal, or academic approach. For determining the action to be taken by the examiner...rigid rules cannot be given and each case should be considered on its merits, *the benefit of any doubt being given to the applicant*. (emphasis added)
> MPEP § 1850 (II)(paragraph 4).

The claims of the instant application do not qualify as a "clear case" of lacking unity of invention. Each claim shares the special technical feature of a composition comprising a compound of formula (I) and a compound of formula (II); the composition represents a contribution over the prior art. As stated above the benefit of *any* doubt with respect to unity of invention must be given to the applicant. Applicants therefore respectfully submit that the composition represents a special technical feature and unity of invention exists between claims 1, 2 and 4-7.

The Examiner has also argued that the composition of claim 1 is anticipated by the Lahm *et al.* (WO 03/015518). Applicants respectfully disagree, noting that a Restriction Requirement is not an Office Action on the merits, and thus, an anticipation rejection is improper.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is hereby requested that the period for replying to the outstanding Office Action be extended three months from January 10, 2009 to April 10, 2009, by the filing of the fee payment which is provided through online credit card payment. The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency (including fees for net addition of claims) or credit any overpayment, to our Deposit Account No. 19-0036.

In the event that further extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Cynthia M. Bouchez
Attorney for Applicants
Registration No. 47,438

Date: 4/7/09

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
948449_1.DOC